S.B.Civil Second Appeal No.109/2002.

Shrigopal and others.
vs.
Ramchandra and another.

DATE OF JUDGMENT ::: 29.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.BK Vyas, for the appellants.
Mr.MA Naushad, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiffs/respondents' suit for possession against the tenants/appellants/defendants was dismissed by the trial court vide judgment and decree dated 18.8.2000. The plaintiff preferred regular first appeal which was allowed by the first appellate court vide judgment and decree dated 13.3.2002 on the ground of personal bonafide necessity after reversing the finding of the trial court on the issue of personal bonafide necessity.

Hence, this second appeal by the defendants/ appellants/tenants.

Learned counsel for the appellants vehemently submitted that the trial court after appreciation of evidence held that the plaintiffs have other accommodation where they can carry on their business. This fact has been discarded by the first appellate court without any cogent reason. Learned counsel for the appellants also submitted that the appellants prove the fact that the respondents' house has not only one shop but also one more shop with atleast two doors. Learned counsel for the appellants tried to invite attention of the Court to the evidence of the parties.

I considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below as also the record.

It is not in dispute that the plaintiffs are doing their business in their purchased house and in the same house, the appellants are tenants. The plaintiffs in their plaint specifically pleaded that they will remove one wall from the shop and will do their business in the shop in dispute. The trial court went absolutely astray and observed that the plaintiffs have not pleaded that they will include the shop in house by removing the wall and ignored the fact that looking to the nature of business of the plaintiffs, they can well utilise the suit premises for trading their product.

The trial court also ignored the important material fact that the plaintiffs clearly stated on oath that the accommodation which is said to be lying vacant with the plaintiffs is a small portion as underground having its walls within the house itself. In the totality, the first appellate court considered each and every fact of the case and thereafter recorded finding of fact about personal bonafide necessity of the plaintiffs about the suit premises.

I do not find any reason to interfere in second appeal as even if there is other view possible than the view taken by the first appellate court, then this is not the scope of Section 100 CPC because of the fact that the finding of fact recorded by the first appellate court cannot be said to be based on no evidence or based by considering irrelevant evidence. Rather say, the finding of the first appellate court is based on reasonable appreciation of evidence.

In view of the above, I do not find any substantial question of law involved in this appeal and this second appeal deserves to be dismissed.

At this stage, learned counsel for the appellants prayed that the appellants may be granted two years' time to vacate the suit property.

Learned counsel for the respondent vehemently submitted that the first appellate court passed the decree on 30.3.2002 and about five years had passed, therefore, no further time may be granted to the appellants.

I considered this prayer of learned counsel for the appellants and looking to the facts of the case, this Court is of the view that the appellants be granted time upto 31.12.2007 to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of two months from today that he shall hand over the vacant possession to the landlord by or before 31.12.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.1.2008. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court or pay directly to the landlord.

In case of non-compliance of the order or default

in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya